

### REMARKS

Claims 1-3, 8-23, and 30-45 are rejected as indefinite for failing to recite a final process step which refers to the preamble. Claims 1 and 2 have been amended to recite a final step which corresponds to the preamble. Claim 3 already contains such a final step (“identifying a test agent as a candidate drug if...”). All other claims are dependent and therefore contain the final step of the claims from which they depend.

Claims 1-3 are also said to be indefinite in their description of cell samples. Claims 1 and 2 have been amended to clarify any ambiguity. Claim 3 did not contain the language which was allegedly confusing (*i.e.*, comprises /consists essentially of).

The examiner correctly identifies a construction of claims 5-9 which has correct antecedent basis. Nonetheless, claims 3, 5, and 9 have been amended to clarify any potential ambiguity by reciting “one or more genes of the set of genes”.

Claim 17, 44, and 45 have been cancelled, so their rejection is moot. Claims 18-23 were cancelled, so their rejection is also moot.

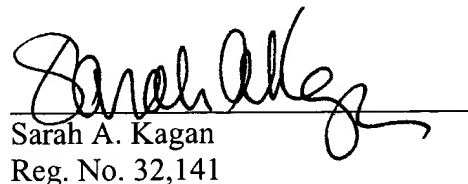
Claims 30-36 recite numbers of genes greater than the number in the elected group of claims. Again, since independent claims recite “a set of genes comprising...” it is not inconsistent that a dependent claim would recite a larger number of genes. Claims 30-36 refer to the total number of genes whose expression level is determined. The total number of genes includes those recited by name in claims 1-3. The amendment clarifies this construction.

It is respectfully submitted that all claims are now in condition for allowance. The amendments were not made sooner because they respond to newly imposed rejections in the final office action.

Respectfully submitted,

Dated: January 18, 2005

By:

  
Sarah A. Kagan  
Reg. No. 32,141

Banner & Witcoff, Ltd.  
Customer No. 28315